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 3 P. O. Box 6125  
 4 Kennewick, WA 99336-0125  
 5 509-735-3581

6 **UNITED STATES DISTRICT COURT FOR THE**  
 7 **EASTERN DISTRICT OF WASHINGTON**

8 JAMES S. GORDON, JR.,

9 Plaintiff,

10 vs.

11 IMPULSE MARKETING GROUP,  
 12 INC.,

13 Defendant

14 IMPULSE MARKETING GROUP,  
 15 INC.,

16 Third-Party Plaintiff,

17 vs.

18 BONNIE GORDON, et al.,

19 Third-Party Defendants.

No. CV-04-5125-FVS

**DEFENDANT'S FIRST  
 REQUEST FOR  
 PRODUCTION OF  
 DOCUMENTS**

20 Pursuant to Fed. R. Civ. P. 34, Defendant, Impulse Marketing Group, Inc.  
 21 ("Defendant") by its undersigned counsel, hereby requests that the Plaintiff, James  
 22 S. Gordon, Jr. ("Plaintiff"), produce for inspection and copying the documents  
 23 described below in its possession, custody, or control. Documents to be produced  
 24 should be delivered to the offices of Klein, Zelman, Rothermel & Dichter, L.L.P.,  
 25 485 Madison Avenue, New York, New York 10022, not later than thirty (30) days  
 26 from the date of this request or Plaintiff shall make arrangements for inspection by  
 27 Defendant at the location where such documents are kept.

**DEFINITIONS**

1           1.     “Document” shall mean any printed, written, recorded, taped,  
2 electronic, graphic, computerized printout or other tangible matter in Plaintiff’s  
3 possession, custody or control from whatever source, however produced or  
4 reproduced, whether in draft or otherwise, whether sent or received or neither,  
5 including the original and non-identical copy (whether different from the original  
6 because of any reason), including but not limited to, correspondence, memoranda,  
7 reports, statements notes, calendars, diaries, computations, audio tape recordings,  
8 films, photographs, records, plans, appraisals, maps, deeds, mortgages, leases and  
9 pleadings. The term “document” is equivalent in meaning and equal in scope to the  
10 usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure.

11           2.     “Possession, Custody or Control” shall include constructive possession  
12 such that such person or entity need not have actual physical possession. As long  
13 as the person or entity has a superior right to compel the production from a third  
14 party (including an agency, authority or representative), the person or entity has  
15 possession, custody or control.

16           3.     “Plaintiff”, “You” or “Your” means Plaintiff, James S. Gordon, Jr., and  
17 is meant to include your divisions, affiliates, agents, attorneys, servants, employees,  
18 representatives and any other person acting or purporting to act on your behalf.

19           4.     “Defendant” shall mean Defendant Impulse Marketing Group, Inc.

20           5.     “Person” shall mean any individual, firm, corporation, partnership,  
21 unincorporated association, trust as well as any other legal, business, regulatory or  
22 governmental entity.

23           6.     “Communication” is used in the broadest sense permitted and includes  
24 any statement from one person to another, whether made orally or in writing, by  
25 telephone, by e-mail, in a document, at a meeting or otherwise.

26           7.     Whenever used herein, the singular includes the plural and the plural  
27 includes the singular; the words “and” and “or” are to read as both conjunctive and  
28

1 disjunctive; the work “including” shall mean “including without limitation.”

2 8. “Identify” or to provide the “identity” of, means:

3 a. In the case of a natural person, to give, to the extent known, the  
4 person’s full name, present or last known address and telephone number, and present  
5 or last known place of employment and telephone number.

6 b. In the case of an entity, to give, to the extent known, its full name,  
7 its present or last known address and telephone number.

8 c. In the case of a document, to give, to the extent known, the type of  
9 document, general subject matter, date of document, and author(s), addressee(s) and  
10 recipient(s).

11 d. In the case of an action or communication, to state whether such  
12 action or communication was written or oral, and where and when such action or  
13 communication occurred; to state each person who was present at or a party to any  
14 part of such action or communication; and to identify all documents embodying,  
15 recording, summarizing, or referring to such action or communication.

16 INSTRUCTIONS

17 1. Unless otherwise specified, documents to be produced pursuant to this  
18 discovery request shall include any and all documents prepared at any time from the  
19 beginning of the investigation of this matter to the present, or which relate to that  
20 time period.

21 2. These requests shall be deemed to be continuing and, in the event your  
22 responses thereto may be enlarged, diminished or otherwise modified by additional  
23 facts, documents, information, or witnesses which become known to you after the  
24 filing of your initial responses, supplementary response should be served pursuant  
25 to Rule 26(e) of the Federal Rules of Civil Procedure and supplementary production  
26 should be made.

1           3.     Plaintiff is requested to list all documents withheld from production on  
2 the grounds of destruction, loss, privilege, or attorney work product by description  
3 and date, and if any objection is interposed to any demand, to specify the basis or  
4 reasons for any objection. If any document requested herein was formerly in  
5 Plaintiff's possession, custody or control and has been lost or destroyed, Plaintiff is  
6 requested to submit, in lieu of such a document, a written statement identifying the  
7 author(s), subject matter, date prepared, date the document was lost or destroyed,  
8 reasons for such destruction and the person(s) requesting and performing the  
9 destruction. With respect to any documents withheld from production on the  
10 grounds of privilege or attorney work product, Plaintiff is requested to identify each  
11 such document by author(s), recipient(s), subject matter, date, title, and nature of  
12 privilege claimed. If any information is withheld because it is stored electronically,  
13 Plaintiff is requested to identify the subject matter of the information, the place or  
14 places where such information is stored and maintained, and the custodian thereof.

15           4.     Any description of documents requested that is specific in nature  
16 should not be interpreted to diminish the breadth of any more general request that  
17 may otherwise encompass such specified documents.

18           5.     All documents produced for copying and inspection pursuant to these  
19 requests are to be labeled to correspond with the categories in this request to which  
20 they are responsive.

21           6.     If any document referred to has been destroyed, is no longer within  
22 your control, or no longer exists for any reason, state the type of document, general  
23 subject matter of the document, the date of the document, such other information as  
24 is sufficient to identify the document, including the author of the document, the  
25 addressee of the document, and, where not apparent, the relationship of the author  
26 and the addressee to each other, state the disposition of that document, when and by  
27 whom it was disposed of, and the reason for its disposition.

REQUESTED DOCUMENTS

1. Any document upon which you will or may rely or that you will or may seek to introduce into evidence in any judicial proceeding in this case.

2. Any document identified, referenced or relied upon in Plaintiff's Complaint.

3. Any document identified, referenced, referred to, or relied upon in responding to Defendant's First Set of Interrogatories.

4. A copy of each individual electronic mail message that Defendant itself allegedly transmitted to an email address used by Plaintiff.

5. A copy of each individual electronic mail message that Defendant itself allegedly transmitted to other email addresses at the domain located at "Gordonworks.com."

6. A copy of each individual electronic mail message that were allegedly transmitted by third persons, corporations, or other entities with whom Defendant conspired with or assisted in the transmission of such electronic mail message to an email address used by Plaintiff and other email addresses located at the "Gordonworks.com" domain.

7. All audio tapes, recordings, memoranda, letters, electronic mail (email) messages, facsimiles, telephone records, purchase orders, complaints, commendations, or other documents regarding conversations and/or communications by and between Plaintiff and any third party with respect to the electronic mail messages at issue in this proceeding.

8. All documents which refer to or relate to Plaintiff, referring to the subject matter of this lawsuit, other than documents filed / served upon Defendant and Third Party Defendants in connection with this lawsuit.

9. Any document relating to the allegation contained in paragraph 3.5 of Plaintiff's Complaint that Plaintiff is an interactive computer service as that term is defined in RCW 19.190.



1 I hereby certify that the original and one copy of the foregoing was mailed  
2 this 23<sup>rd</sup> day of December, 2005, to:

3 Douglas E. McKinley, Jr.  
4 Attorney at Law  
5 P.O. Box 202  
6 Richland, WA 99352.  
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